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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments  
FM Broadcast Stations  
(Quannah, Archer City, Converse, Flatonia,  
Georgetown, Ingram, Keller, Knox City,  
Lakeway, Lago Vista, Llano, McQueeney,  
Nolanville, San Antonio, Seymour, Waco and  
Wellington, Texas, and Ardmore, Durant,  
Elk City, Healdton, Lawton and Purcell,  
Oklahoma.)

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)  
) MM Docket No. 00-148  
) RM-9939  
) RM-10198  
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To: The Commission

OPPOSITION OF CHARLES CRAWFORD TO  
APPLICATION FOR REVIEW

Gene A. Bechtel

Law Office of Gene Bechtel, P.C.  
Suite 600, 1050 17th Street, N.W.  
Washington, D.C. 20036  
Telephone 202-496-1289  
Telecopier 301-762-0156

Counsel for Charles Crawford

July 7, 2004

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### SUMMARY

The decision to dismiss the Joint Parties' counterproposal in the Quanah proceeding is well reasoned. Nothing in the Joint Parties' petition provides grounds for the Commission to grant the relief requested.

The cases cited by the Joint Parties reflect day to day operational aspects of the agency's allotment work including converting a counterproposal into a separate rulemaking proceeding where the circumstances warrant. However, in so doing in those cases, the Commission sees to it that public notice of the separate proceeding is given to the end that members of the public will have the requisite opportunity to know about and comment on the counterproposal. None of the cases remotely supports the wild claim that pieces of the Joint Parties' mammoth Quanah counterproposal of their choosing should or legally can be separated out and granted "nunc pro tunc" dating back nearly four years obliterating intervening allotment activity that may have taken place.

Previously, the labywrinthine trail from the Quanah notice to the end result, while following some 18 steps across Oklahoma and Texas, at least purportedly had some nexus between each step. The Joint Parties now request severance and grant of a major portion of the counterproposal which never had any nexus tying back to the Quanah notice. Such a request on a nunc pro tunc basis, by its very terms and conditions, cannot possibly pass the

"logical outgrowth" test under the Administrative Procedure Act.

The Joint Parties' seek credit on the basis that it would provide the first local outlet for self expression under Section 307(b) of the Communications Act, for three tiny communities located within the San Antonio and Austin, Texas, radio markets, ranked 32nd and 49th largest in the nation, respectively. In each instance, a long established major radio operator will continue to own and operate its megamillion dollar facility with even greater power and coverage throughout the market. It is irrational to believe that these major market stations will in fact serve as the "first local outlets" for these tiny communities within the meaning of the Act. As applied to this case, the Commission's Tuck policy under which such an irrational concept can be advanced is arbitrary, capricious and contrary to law.

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Nolanville, San Antonio, Seymour, Waco and )  
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Elk City, Healdton, Lawton and Purcell, )  
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To: The Commission

OPPOSITION OF CHARLES CRAWFORD TO  
APPLICATION FOR REVIEW

1. The Application for Review ("JP Application") filed June 21, 2004 by Rawhide Radio, LLC, Capstar TX Limited Partnership, CCB Texas Licenses, L.P. and Clear Channel Broadcasting Licenses, Inc. ("Joint Parties") is without merit for reasons stated the Memorandum Opinion and Order released April 27, 2004 by the Audio Division of the Media Bureau (the "Order") and for the following reasons as well.

A.  
Introduction

2. The Joint Parties just don't get it. They, like the government and the rest of us, are governed by the Administrative Procedure Act. The APA requires that reasonable notice be given regarding rulemaking proposals, which is limited to matters that are a "logical outgrowth" of the rulemaking notice as defined in the case law. At the time in 2000 for filing counterproposals in conjunction with the Quanah rulemaking petition, they submitted a humongous 18-step counterproposal, some three years in the

making, seemingly beyond comprehension as coming within the meaning of "logical outgrowth", but the Commission gave them a humongous benefit of the doubt that currently is under review in the Court of Appeals. Charles Crawford v. FCC and United States, No. 04-1031 (D.C.Cir.).

3. Now, the Joint Parties, having changed its counterproposal to eliminate Steps One through Ten, relying on Steps Eleven through Eighteen, breaking the chain of any tie whatsoever to the Quanah rulemaking notice, are complaining because the Commission has declined to accord their changed proposal retroactive status (a) as though it is the one filed in response to the Quanah rulemaking notice four years ago, which it isn't, and (b) has legitimate status as a "logical outgrowth" of the Quanah notice, which it doesn't. Who are the Joint Parties kidding?

B.

The labywrinthine trail: Steps one to ten,  
from the Quanah rulemaking petition to  
Ardmore-Healdton, Oklahoma  
(the Northern Segment)

4. The student of this case will recall that the captioned rulemaking proceeding was begun with the filing of a petition to allot channel 233C2 at Quanah, Texas, located near the Texas Panhandle in the northwestern part of the state. The Commission's notice of proposed rulemaking identified Marie Drischel residing in Big Creek, Mississippi as the party who filed the petition to commence the rulemaking proceeding.

5. The Quanah petition did not mention -- and perforce the



FCC public notice did not mention -- any other community or the fact that for a long time previously, dating back to 1998, a counterproposal had been conceived, developed and prepared -- and was going to be filed on the comment date -- by the Joint Parties, major group broadcasters, having interests in many hundreds of radio stations including numerous stations throughout Texas.

6. All Mr. Crawford or other members of the general public knew from the agency's rulemaking public notice was that Ms. Dreschel proposed to allot and file for a new radio station in the community of Quanah, Texas on the channel that she had specified. The labywrinthine trail, a phrase taken from a landmark court decision regarding "logical outgrowth" of rulemaking notices under the APA<sup>1</sup>, leading to results desired by the Joint Parties are these:

(a) Step one: The trail begins with a proposal to move existing FM channel 248C2 at Durant, Oklahoma, to a small town named Keller, Texas, imbedded in the heart of the Dallas-Fort Worth metropolitan area, the nation's sixth largest radio market, for which an upgrade to a fully powered channel 248C was proposed. Joint Parties' Counterproposal at 5-13.

(b) Step two: In order to do that, a radio station in Archer City, Texas, would have to change from channel 248C1 to channel 230C1. Counterproposal at 13.

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<sup>1</sup> Weyerhaeuser v. Costle, 590 F.2d 1011 (D.C.Cir. 1978).

(c) Step three: In order for the Archer City station to do that, a radio station in Seymour, Texas would relinquish its authorized upgrade from a Class A channel to channel 230C2 and change to channel 222C2. Counterproposal at 14.

(d) Steps four, five and six: In order for the Seymour station to do that, three authorized, but vacant allotments would be changed, one in Seymour, one in Wellington, Texas, and one in in Knox City, Texas. Counterproposal at 15.

(e) Step seven: In order for the Archer City reallocation to happen (step two), a radio station in Lawton, Oklahoma, would change from channel 231C2 to channel 232C2. Counterproposal at 15.

(f) Step eight: In order for the Lawton reallocation to happen, a radio station in Elk City, Oklahoma, would change from channel 232C3 to 233C3, creating a conflict with Ms. Dreschel's petition to allot channel 233 to Quanah, down the road away from Elk City. Counterproposal at 15-16.

(g) Step nine: Return again to step two, the Archer City reallocation. For that to happen, in addition to the steps already mentioned, a radio station in Healdton, Oklahoma, would move and change its community of license to Purcell, Oklahoma. Counterproposal at 16-18.

(h) Step nine brought the labyrinthine trail to the brink of a precipice overlooking a regulatory Grand Canyon. Moving the radio station out of Healdton would leave the community without a local outlet, an FCC no-no.

(i) Not to worry. Labyrinthine trail blazers are an inventive lot. Enter step ten: a radio station in Ardmore, Oklahoma, would give up its license in that larger community and adopt Healdton as its community of license, a highly unusual 307(b) maneuver which the Joint Parties refer to as "the Ardmore/Healdton" proposal. Counterproposal at 18-19.

C.

The labywrinthine trail: Steps eleven to eighteen, from Waco, Texas to Flatonia, Texas (the Southern Segment)

7. We now reach the point where the Joint Parties have chosen to abandon the foregoing labywrinthine trail as set forth in the Counterproposal timely filed in the Quanah proceeding. We start a new labywrinthine trail with no nexus to the Quanah petition whatsoever. The labywrinthine trail blazer having set its compass starting at Quanah, must now forget all about Steps One through Ten and discern a totally disconnected chain of allotments that are intended by the Joint Parties to adversely affect interested citizens whose only clue is the Quanah public notice:

(a) Step eleven. The new, disconnected labywrinthine trail begins with a radio station in Waco, Texas, that would downgrade from channel 248C to channel 247C1 and change its community of license to Lakeway, Texas, a small community near Austin, Texas. In the process, the station, owned by Joint Parties' Capstar TX, would upgrade its commercial location from Waco, the 193rd radio market, to Austin, the 49th radio market. Counterproposal at 19-24.

(b) Step twelve: For the Waco/Lakeway changes to occur, a San Antonio radio station would downgrade from channel 247C to 245C1. Counterproposal at 24. This step conflicts with a petition for allotment of channel 245C3 at Tilden, Texas, filed two years ago in May 2001. Petition for Partial Reconsideration and Request for Expedited Action filed by the Joint Parties on June 16, 2003 ("Petition"), Exh. A. The Tilden channel (245) bears no relationship to the Quanah channel (233) and Tilden is located at least 350 miles from Quanah.

(c) Step thirteen. A radio station in Georgetown, Texas, proposes to downgrade from channel 244C1 to 243C2 and change the community of license to Lago Vista, Texas, another small community near Austin, Texas. This would improve the commercial position of the station, owned by the Joint Parties' Clear Channel Broadcast Licenses, Inc., as a second move-in to the Austin radio market. Counterproposal at 24-29. This step conflicts with a petition for allotment of channel 243A at Evant, Texas filed two years ago in June, 2001. Petition, Exh. A. The Evant channel bears no relationship with the Quanah channel (233). Evant is located some 200 miles from Quanah.

(d) Step fourteen: For the Waco/Lakeway/Georgetown changes to occur, channel 256A would have to be substituted for channel 243A at Ingram, Texas. Counterproposal at 25, ¶44. This step conflicts with a petition for allotment of channel 256A at Harper, Texas filed two years ago in May 2001. Petition, Exh. A. The Harper channel bears no relationship with the Quanah channel

(233). Harper is located some 200 miles from Quanah.

(e) Step fifteen: Also for the Waco/Lakeway/Georgetown changes to occur, a radio station in Llano, Texas, would move its transmitter location and change from channel 242A to channel 297A. Counterproposal at 29. This step conflicts with a petition for allotment of channel 297A at Goldthwaite, Texas filed two years ago in May 2001. Petition, Exh. A. The Goldthwaite channel bears no relationship with the Quanah channel (233). Goldthwaite is located some 200 miles from Quanah.

(f) Step sixteen: In order for the Llano reallocation to happen, a radio station in Nolanville, Texas, would change from channel 297A to channel 249A. Counterproposal at 29-30.

(g) Step seventeen: In order for the Nolanville station's channel change to happen, a radio station in McQueeney, Texas, would change its transmitter site and relocate from McQueeney to Converse, Texas. This was the second precipice overlooking the regulatory grand canyon of an FCC no-no removing the only local outlet for McQueeney, a community located outside any metropolitan area. The choice, here, was a dreadful one that no right-thinking follower of the labyrinthine trail would have anticipated as a legitimate public interest proposal, i.e., removing the only local outlet in favor of awarding -- to one of the Joint Parties who owns the McQueeney station, Rawhide Radio, L.L.C. -- still another high powered FM station in the San Antonio radio market, the nation's 32nd largest. Counterproposal at 30-35.

(h) The untenable step seventeen conflicts with a petition to allot 249C3 at Mason, Texas and a petition to allot channel 250A at Batesville, Texas, both filed two years ago in May 2001. Petition, Exh. A. Neither channel bears any relationship with the Quanah channel (233). Mason is located some 200 miles from Quanah; Batesville is located at least 300 miles from Quanah.

(i) Step eighteen is an allotment of channel 232A to Flatonia, Texas. Counterproposal at 35-36. This step conflicts with a petition to allot channel 232A at Shiner, Texas, filed more than two years ago in April 2001. Petition, Exh. A. It also conflicts with a petition to allot the same channel at Victoria, Texas filed in October 2002. Id. The channel bears no relationship with the Quanah channel (233). Shiner and Victoria are located in the range of 350 to 400 miles from Quanah.

D.

With all ties to the Quanah rulemaking petition severed, the Southern Segment cannot be deemed a "logical outgrowth" of that petition

8. The Administrative Procedure Act requires the Commission to publish in the Federal Register notice of a proposed rule in order to allow interested persons to file comments reflecting their interests. 5 U.S.C. §553(b)(3). The final rule must be a logical outgrowth of the proposed rule. Unless persons are sufficiently alerted to know whether their interests are at stake, the public notice is unlawful. Weyerhaeuser Company v. Costle, supra; Owensboro on the Air v. United States, 262 F.2d 702 (D.C.Cir. 1958) (public notice upheld as meeting the "logical

outgrowth test" in TV allotment proceeding involving a distance of 95 miles to a neighboring market); and agency common-law rulings Pinewood, South Carolina, 5 FCC Rcd 7609 (1990) (adequate notice to the public upheld in FM proceeding involving a distance of 17 miles); Medford and Grants Pass, Oregon, 45 RR2d 359 (1979) (adequate notice to the public upheld in TV proceeding involving distance of 27 miles); Pensacola, Florida, 62 RR2d 535 (MM Bur. 1987) (adequate notice to the public upheld in an FM proceeding involving distance of less than 10 miles); Toccoa, Sugar Hill, and Lawrenceville, Georgia, DA 01-2784 (MM Bur. 2001) (the "logical outgrowth test" was not satisfied in an FM proceeding involving a distance of 13 miles).

9. There is no way -- legally or rationally -- that the Commission's public notice of the Quanah allotment rulemaking proceeding can be deemed to apprise the public of alternative allotments across the State of Texas and much of the State of Oklahoma affecting either the first leg of the labywrinthine trail, i.e., Durant, Oklahoma, Keller, Texas, Archer City, Texas, Seymour, Texas, Wellington, Texas, Knox City, Texas, Lawton, Oklahoma, Elk City, Oklahoma, Healdton, Oklahoma, Ardmore, Oklahoma, or the second leg of the labywrinthine trail, Waco, Texas, Lakeway, Texas, San Antonio, Texas, Georgetown, Texas, Llano, Texas, Nolanville, Texas, McQueeny, Texas, Converse, Texas, Ingram, Texas, and Flatonia, Texas, or the combination of the two.

10. The spacings between Quanah and Mason, Tilden,

Batesville, Harper, Goldthwaite, Evant and Victoria, Texas, ranging from 200 to 400 miles, dwarf the spacings supporting a finding of "logical outgrowth" in the FM allotment holdings in Pinewood (17 miles) and Pensacola (ten miles or less). In Taccoa, the Bureau did not find a "logical outgrowth" even though the relevant communities were within 13 miles of each other. In allotment proceedings involving television channels and markets, where distances are likely to be greater than in FM, "logical outgrowth" was found in Owensboro involving channel changes in markets 95 miles apart and in Medford and Grants Pass involving channel changes in communities 27 miles apart.

11. For the benefit of the Commission and its staff residing in the local area, if an allotment petition for an FM station in Washington, D.C. is exposed to ABA-sanctioned notice of a potential for conflicting petitions as far away as 400 miles, the exposure would be measured by an arc starting in the vicinity of Boston, Massachusetts, thence to Albany, New York, thence to Cleveland, Ohio, thence to Lexington, Kentucky, thence to Charlotte, North Carolina, thence to Charleston, South Carolina:

12. This is much of the entire eastern United States. Section 307(b) principles in FM allotment proceedings are vastly more refined than that and parties who file and prosecute the rulemaking petitions essential to the implementation of Section 307(b) are entitled to commensurate notice protection under the Administrative Procedure Act. When that is done, based on the



agency's history of common law rulings with respect to "logical outgrowth" in allotment rulemaking proceedings, 200 to 400 mile spacings at issue here do not even come close to invoking APA sanctioned notice under the "logical outgrowth" test.

E.

Allotment cases reflecting respect for reasonable application of the "logical outgrowth" requirement do not support approval of the Southern Segment

13. The allotment cases cited by the Joint Parties reflect respect for reasonable application of the "logical outgrowth" requirement and institution of fresh rulemaking proceedings for counterproposals where appropriate. None of these cases remotely supports the preposterous request to sever Steps Eleven through Eighteen sans any tie to the Quannah rulemaking notice and accord them nunc pro tunc protection under that notice.

(a) In Noblesville, Indianapolis and Fishers, Indiana, 18 FCC Rcd 11039 (Med.Bur. 2003), JP Application at 7, the petitioning parties sought to modify the initial rulemaking proposal while it was pending and the Commission declined to do so; rather, it issued a new notice of proposed rulemaking "to insure that the public will have an opportunity to participate fully" in commenting on the modified proposal. The three communities were within 30 miles of each other.

(b) In Saratoga, Wyoming, et al, 15 FCC Rcd 10358 (MM Bur. 2000), JP Application at 7, the Commission noted that with respect to three interrelated allotment proceedings the same parties participated in the proceedings and accordingly had actual notice of actions being taken. After such actions had

been taken, there remained an unresolved counterproposal which the Commission determined "will be treated as a new petition for rulemaking in a separate proceeding," hence calling for public comment. The communities that were involved in the initial rulemaking, Saratoga and Green River, Wyoming, were approximately 110 miles apart; the subject counterproposal, put out as a fresh allotment proceeding, related to Big Piney and La Barge, Wyoming, within 20 miles of each other.

(c) In Alva, Oklahoma, et al, 11 FCC Rcd 20915 (MM Bur. 1996), JP Application at 8, Party A filed a petition to allot a channel to Community A (Deerfield, Missouri), Party B filed a counterproposal proposing a conflicting allotment to Community B (Bartlesville, Oklahoma), Party A did not pursue its petition in the proceeding, Party B did, and the Commission granted the counterproposal of Party B. What is new or noteworthy here about that? Bartlesville and Deerfield are estimated to be about 80-100 miles apart.

(d) In Oakdale and Campti, Louisiana, 7 FCC Rcd 1033 (MM Bur. 1992), JP Application at 8, a station seeking to upgrade its FM facility lost to a competing allotment to establish a first local service; however, the Commission could and did place its petition in a separate rulemaking docket containing another allotment which did not conflict with the upgrade; thus, resolving the allotment situation for all three parties before it. In the separate docket, as in the initial docket, there was notice and opportunity for the public to comment. The upgraded

station's community, Oakdale, was located some 80 miles from Campti, Louisiana (the conflicting proposal) and Coushatta, Louisiana (the non-conflicting proposal); the latter two communities were a few miles apart.

(e) In Kingston, Tennessee, et al, 2 FCC Rcd 3589 (MM Bur. 1987), JP Application at 7, the initial petitioner withdrew, a counterproposal was unacceptable and the proceeding was terminated. One of the parties attempted to file a new petition in the same proceeding; instead, the Commission established a new docket for consideration of that petition, i.e. with public notice and opportunity to comment. The contending communities were Kingston, Tennessee and Somerset, Kentucky, approximately 75 miles apart.

(f) In Cazenovia, New York, et al, 2 FCC Rcd 1169 (MM Bur. 1987), the main proceeding involved various proposals to deal with up-state New York upgrades and allotments. A counterproposal regarding Vermont allotments having no conflict with the main proceeding was accepted by the Commission as a separate petition for rulemaking, with public notice and opportunity to comment.

(g) In Milford, Utah, DA 04-1651 (Media Bur. released June 10, 2004), JP Application at 3, 6, 7, a petition to allot a channel to Milford did not advance for want of comments by the petitioner; a counterproposal was filed for Enterprise, Utah, which was found to be defective on a number of grounds. Two petitions, competitive with each other to allot a channel to Lake

Havasu City, Arizona, or Pahrump, Nevada Nevada, were also in conflict with the Enterprise counterproposal, and were put on public notice for consideration with the Lake Havasu City and Pahrump counterproposals. Upon dismissal of the defective Enterprise counterproposal, the FCC issued a fresh notice of proposed rulemaking for the remaining conflicted proposals for allotment to Lake Havasu City or Pahrump. These four communities form a rough triangle whose sides are approximately 100 miles long.

14. To be sure, the Commission and its staff have room for reasonable flexibility within the "logical outgrowth" framework to adapt their processes as reflected in these cases in order to resolve allotment issues that arise in the day-to-day work of the agency. However, the Joint Parties are not seeking such reasonable operational flexibility. With no supporting case precedent, the Joint Parties seek unique retroactive nunc pro tunc charity from the Commission, at the expense of parties whose legitimate intervening rights would be trampled on, because their grande scheme to float an enormous self-serving spectrum overhaul, under the aegis of an obscure singleton rulemaking petition, came apart.

#### F.

The Joint Parties' claim for credit based on "population gain" from the Southern Segment is without merit

15. In the JP Application at 4, the Joint Parties state there will be "an overall gain in FM service to a population of more than one million people" as a result of the Southern

Segment. There is no suggestion that any of these people reside in a "white area" without any reception service or a "gray" area with only a single reception service. In all likelihood, the vast majority of these people reside in the San Antonio and Austin radio markets ranked 32nd and 49th largest in the nation. There are approximately 46 radio stations in the San Antonio radio market (Exhibit 1) and approximately 45 radio stations in the Austin radio market (Exhibit 2), offering an enormous range of radio services with multiple stations providing the more popular services. News and other information programming can be heard 24-7 across the radio dial. If the million people receiving an incremental additional signal already have such a multiplicity of signals, how relevant is this statistic except to show major markets have a lot of people in them? It should be given no weight in consideration of the JP Application.

G.

As applied to "first local outlet" claims regarding the Southern Segment, the "Tuck" policy is arbitrary and capricious, contrary to law

16. In the JP Application at 4, the Joint Parties want the Commission to believe that a Class C-1 allotment in the Austin, Texas market, the nation's 49th largest, worth megamillions of dollars, after all these years of ownership and operation by Joint Parties' Capstar TX Limited Partnership, will become (and is to be credited under Section 307(b) as) the local outlet for the tiny community of Lakeway, population 8,002, imbedded within the huge metro service area of a Class C-1 facility.

17. The Joint Parties also want the Commission to believe that a Class C-2 allotment in the Austin, Texas market, worth megamillions of dollars, after all these years of ownership and operation by Joint Parties' Clear Channel Broadcast Licenses, Inc., will become (and is to be credited under Section 307(b) as) the local outlet for the tiny community of Lago Vista, Texas, population 4,507, imbedded in the major metro service area of a Class C-2 facility.

18. And, the Joint Parties want the Commission to believe that a Class C-1 allotment in the San Antonio, Texas market, the nation's 32nd largest, worth megamillions of dollars, after all these years of ownership and operation by Joint Parties' Rawhide Radio, L.L.C., will become (and is to be credited under Section 307(b) as) the local outlet for the tiny community of Converse, Texas, population 11,508, imbedded in the huge metro service area of a Class C-1 facility.

19. Right.

20. How is it that parties can present such a scenario to the Commission and, instead of being ushered out the door, how is it that the Commission will buy it? It's something called the Tuck policy.

21. We are reminded of a protocol of the State Department. During the 1800's and early early 1900's when our nation was actively acquiring interests in islands and territories in competition with nations such as England and Spain, statutes and other documents would at times provide that a given island or

territory was "appertaining" to the United States. E.g., 48 U.S.C. §1411 regarding Navassa Island in the Caribbean near Cuba shortly prior to the Spanish-American War. The State Department explains the meaning of "appertaining" in this way: "The use of the word 'appertain' is deft, since it carries no exact meaning and lends itself readily to circumstances and the wishes of those using it." Sovereignty Study of State Department, 1931-1932, at 145-146 (copy attached as Exhibit 3). So, too, here, with respect to the Commission's Tuck policy.

22. The Tuck policy is a menu of wildly subjective criteria: (a) The extent to which the community residents work in the larger metropolitan area; (b) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (c) whether community leaders and residents perceive the specified community as being an integral part of, or separate from the larger metropolitan area; (d) whether the specified community has its own local government and elected officials; (e) whether the smaller community has its own telephone book provided by the telephone company or zip code; (f) whether the community has its own commercial establishments, health facilities, and transportation systems; (g) the extent to which the specified community and the central city are part of the same advertising market; and (h) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. Faye and Richard Tuck, 3 FCC Rcd 5374

(1988).

23. The kaleidoscope of combinations of facts and circumstances under these criteria is virtually endless. But there is more. All eight factors need not favor the applicant. If a majority of the factors favor the specified community and a minority are unfavorable, the specified community can be awarded the allotment. Id.; Parker and Port St. Joe, Florida, 11 FCC Rcd 1095, ¶¶9-11 (1996). So, there are kaleidoscopes of combinations of facts and circumstances both for and against the specified community.

24. But there is still more. Nowhere amongst this no-man's land of subjective facts and circumstances is there provision for the most crucial consideration of all, i.e., a determination of the reasonable likelihood that a broadcast station with a signal serving the central city or metropolitan area will in truth serve as a meaningful local outlet for a designated licensed community.

25. We don't know if the Morningside, Maryland, situation (in which tiny Morningside is the home of the top ranked station in the Baltimore-Washington market) was a product of the Tuck policy. But the Morningside case is symptomatic of the need to consider the reasonable likelihood of a meaningful local outlet for the smaller community in a major market in the Tuck line of cases. For many years now, the Morningside example involving Infiniti's controversial and popular station has been a public fact of life in the Washington, D.C. area for the Commission and its staff to observe and alert them to this fatal flaw in the



Tuck allotment policy.

26. The records in allotment proceedings in which the nebulous, subjective Tuck policy is applied, ignoring the realities of the radio marketplace, permit the agency to come down for or against an allotment, with equal force, on the very same record. The policy essentially boils down to what the agency wants the policy to mean. Tuck is a policy better suited to the art of diplomacy than to compliance with the rigors of agency decisionmaking under Motor Vehicle Manufacturers Association v. State Farm Insurance Company, 463 U.S. 29 (1983), and the Administrative Procedure Act. As sought here in the two linear inches of paper seeking credit as "first local outlets" under Section 307(b) for tiny Lakeway, Lago Vista and Converse, Texas, imbedded in the Austin and San Antonio radio markets, the Tuck policy is arbitrary, capricious and contrary to law.

H.

Conclusion

27. For the foregoing reasons, the JP Application should be denied.

Respectfully submitted,



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Gene A. Bechtel

Law Office of Gene Bechtel, P.C.  
Suite 600, 1050 17th Street, N.W.  
Washington, D.C. 20036  
Telephone 202-496-1289  
Telecopier 301-762-0156

July 7, 2004

Counsel for Charles Crawford

EXHIBIT 1

# radio-locator

formerly the M/I List of Radio Stations on the Internet

find US radio stations by location

find by call letters

city/zip San Antonio

state TX

go

go

## Site Navigation:

[home page](#)  
[city search](#)  
[call sign search](#)  
[format search](#)  
[u.s. state search](#)  
[canadian search](#)  
[international search](#)  
[advanced search](#)  
[mobile edition](#)

There are 46 radio stations within close listening range of  
 San Antonio, Texas. (29° 27' 06" N, 98° 30' 46" W)

② Didn't find your station? [Click here](#) to modify your search.

③ Info: Click on this icon to get more information about a station or to submit a change.

⚡ Bitcaster: Indicates that the station broadcasts its audio on the Internet.

Distances to the stations are in miles.

Info	Call Sign	Frequency	Dist./Signal	City	School	Format
③	KPAC	88.3 FM	13.6 mi.	<a href="#">San Antonio, TX</a>		Classical
⚡ ③	K204DX (KAWZ)	88.7 FM	12.0 mi.	<a href="#">San Antonio, TX</a>		Religious
⚡ ③	KSTX	89.1 FM	13.6 mi.	<a href="#">San Antonio, TX</a>		Public Radio
⚡ ③	KSYM	90.1 FM	0.9 mi.	<a href="#">San Antonio, TX</a>	San Antonio College	College
⚡ ③	KYES	90.9 FM	22.2 mi.	<a href="#">San Antonio, TX</a>		Religious
⚡ ③	KZLV	91.3 FM	19.9 mi.	<a href="#">Lytle, TX</a>		Christian Contemporary
⚡ ③	KRTU	91.7 FM	2.0 mi.	<a href="#">San Antonio, TX</a>	Trinity University	Jazz
③	KROM	92.9 FM	19.3 mi.	<a href="#">San Antonio, TX</a>		Spanish
③	KLEY	94.1 FM	18.5 mi.	<a href="#">Floresville, TX</a>		Spanish
③	KCOR	95.1 FM	32.8 mi.	<a href="#">Comfort, TX</a>		Spanish
③	KXXM	96.1 FM	14.4 mi.	<a href="#">San Antonio, TX</a>		Hot AC
③	KAJA	97.3 FM	13.6 mi.	<a href="#">San Antonio, TX</a>		Country
③	KNGT (CP) ③	97.7 FM	52.8 mi.	<a href="#">McQueeney, TX</a>		Tejano
③	KBBT	98.5 FM	13.6 mi.	<a href="#">Schertz, TX</a>		Urban Contemporary
⚡ ③	KISS	99.5 FM	19.3 mi.	<a href="#">San Antonio, TX</a>		Rock
⚡ ③	KCYX	100.3 FM	13.6 mi.	<a href="#">San Antonio, TX</a>		Country
⚡ ③	KONO	101.1 FM	13.6 mi.	<a href="#">Helotes, TX</a>		Oldies
③	KQXT	101.9 FM	2.9 mi.	<a href="#">San Antonio, TX</a>		Adult Contemporary
③	KSRX	102.7 FM	2.9 mi.	<a href="#">San Antonio, TX</a>		Rock
③	KEYI	103.5 FM	55.9 mi.	<a href="#">San Marcos, TX</a>		Oldies
③	K279AB (KMFR)	103.7 FM	5.3 mi.	<a href="#">San Antonio, TX</a>		Classic Rock
③	KRIO	104.1 FM	52.7 mi.	<a href="#">Pearsall, TX</a>		Country
③	KZEP	104.5 FM	2.8 mi.	<a href="#">San Antonio, TX</a>		Classic Rock
⚡ ③	KSMG	105.3 FM	19.3 mi.	<a href="#">Seguin, TX</a>		Hot AC
⚡ ③	KELZ	108.7 FM	18.5 mi.	<a href="#">Terrell Hills, TX</a>		Top-40
③	KXTN	107.5 FM	19.3 mi.	<a href="#">San Antonio, TX</a>		Tejano

① <b>KTSA</b>	550 AM	6.6 mi.		<u>San Antonio, TX</u>	News/Talk
① <b>KLBJ</b>	590 AM	75.9 mi.		<u>Austin, TX</u>	News/Talk
① <b>KSLR</b>	630 AM	10.6 mi.		<u>San Antonio, TX</u>	Religious
① <b>KKYX</b>	680 AM	19.5 mi.		<u>San Antonio, TX</u>	Country
① <b>KSAH</b>	720 AM	20.9 mi.		<u>Universal City, TX</u>	Spanish
① <b>KTKR</b>	760 AM	12.3 mi.		<u>San Antonio, TX</u>	Sports
① <b>KSJL</b>	810 AM	9.8 mi.		<u>Somerset, TX</u>	Urban Contemporary
# ① <b>KONO</b>	860 AM	5.7 mi.		<u>San Antonio, TX</u>	Oldies
① <b>KLUP</b>	930 AM	7.9 mi.		<u>Terrell Hills, TX</u>	Nostalgia
① <b>KBIB</b>	1000 AM	22.6 mi.		<u>Marion, TX</u>	Spanish
① <b>KDRY</b>	1100 AM	11.0 mi.		<u>Alamo Heights, TX</u>	Religious
① <b>KRDY</b>	1160 AM	11.9 mi.		<u>San Antonio, TX</u>	Children's
① <b>WOAI</b>	1200 AM	23.4 mi.		<u>San Antonio, TX</u>	News/Talk
① <b>KZDC</b>	1250 AM	5.1 mi.		<u>San Antonio, TX</u>	Spanish
① <b>KXTN</b>	1310 AM	10.6 mi.		<u>San Antonio, TX</u>	Tejano
① <b>KCOR</b>	1350 AM	8.1 mi.		<u>San Antonio, TX</u>	Spanish
① <b>KFNI</b>	1380 AM	31.2 mi.		<u>Pleasanton, TX</u>	Ethnic
① <b>KGNB</b>	1420 AM	25.0 mi.		<u>New Braunfels, TX</u>	Talk
① <b>KCHL</b>	1480 AM	6.5 mi.		<u>San Antonio, TX</u>	Gospel Music
① <b>KEDA</b>	1540 AM	11.7 mi.		<u>San Antonio, TX</u>	Spanish

very weak signal   weak signal   moderate signal   strong signal   very strong signal

### Try another search:

- Click on the help icons for additional information about a search term.
- If you are having trouble locating stations, look [here](#) for tips.
- Look [here](#) to find stations by geographic coordinates.

#### 1. Enter your city or zipcode: (United States only)

City or Zipcode:  State (optional):

#### 2. Choose which types of radio stations to find:

☐ AM Only   ☐ FM Only   ☒ AM and FM

- ☒ Licensed Stations   ☒ Low Power FM Stations   
☒ Construction Permits   ☒ FM Translators   
☒ Unlicensed Stations   ☒ FM Booster Stations

Station Format:

#### 3. Choose a reception range:

☒ Local Stations Only

<http://www.radio-locator.com/cgi-bin/locate?select=city&city=San+Antonio&state=TX&sid=&x=0&y=0>

7/6/200

EXHIBIT 2

# radio-locator

formerly the MTX List of Radio Stations on the Internet

find US radio stations by location

find by call letters

city/zip Austin

state TX

go

go

Do you want to sell merch like this...

## Site Navigation:

[home page](#)  
[city search](#)  
[call sign search](#)  
[format search](#)  
[u.s. state search](#)  
[canadian search](#)  
[international search](#)  
[advanced search](#)  
[mobile edition](#)

There are 45 radio stations within close listening range of  
 Austin, Texas. (30° 18' 02" N, 97° 44' 50" W)

Ⓜ Didn't find your station? [Click here](#) to modify your search.

Ⓜ Info: Click on this icon to get more information about a station or to submit a change.

Ⓜ Bitcaster: Indicates that the station broadcasts its audio on the Internet.

Distances to the stations are in miles.

Info	Call Sign	Frequency	Dist./Signal	City	School	Format
Ⓜ	<a href="#">KNLE</a>	88.1 FM	11.5 mi.	<a href="#">Round Rock, TX</a>		Christian Contemporary
Ⓜ	<a href="#">KAZI</a>	88.7 FM	5.0 mi.	<a href="#">Austin, TX</a>		Urban Contemporary
Ⓜ	<a href="#">K206CE (KAWZ)</a>	89.1 FM	9.9 mi.	<a href="#">Austin, TX</a>		Religious
Ⓜ	<a href="#">KMFA</a>	89.5 FM	3.5 mi.	<a href="#">Austin, TX</a>		Classical
Ⓜ	<a href="#">KUT</a>	90.5 FM	7.2 mi.	<a href="#">Austin, TX</a>	University of Texas	Public Radio
Ⓜ	<a href="#">KNCT</a>	91.3 FM	48.0 mi.	<a href="#">Killeen, TX</a>	Central Texas College	Variety
Ⓜ	<a href="#">KOOP</a>	91.7 FM	5.0 mi.	<a href="#">Hornsby, TX</a>		Variety
Ⓜ	<a href="#">KVRX</a>	91.7 FM	5.0 mi.	<a href="#">Austin, TX</a>	University of Texas	College
Ⓜ	<a href="#">KQJZ</a>	92.1 FM	18.9 mi.	<a href="#">Hutto, TX</a>		Smooth Jazz
Ⓜ	<a href="#">KKLB (CP) Ⓜ</a>	92.5 FM	21.5 mi.	<a href="#">Elgin, TX</a>		Tejano
Ⓜ	<a href="#">KDHT</a>	93.3 FM	32.8 mi.	<a href="#">Cedar Park, TX</a>		Hip Hop
Ⓜ	<a href="#">KLBJ</a>	93.7 FM	2.8 mi.	<a href="#">Austin, TX</a>		Rock
Ⓜ	<a href="#">KAMX</a>	94.7 FM	3.6 mi.	<a href="#">Luling, TX</a>		Hot AC
Ⓜ	<a href="#">KKMJ</a>	95.5 FM	3.5 mi.	<a href="#">Austin, TX</a>		Adult Contemporary
Ⓜ	<a href="#">KHFI</a>	96.7 FM	3.5 mi.	<a href="#">Georgetown, TX</a>		Top-40
Ⓜ	<a href="#">KVET</a>	98.1 FM	3.5 mi.	<a href="#">Austin, TX</a>		Country
Ⓜ	<a href="#">KHHL</a>	98.9 FM	32.8 mi.	<a href="#">Leander, TX</a>		Spanish
Ⓜ	<a href="#">K259AJ (KDHT)</a>	99.7 FM	3.5 mi.	<a href="#">Austin, TX</a>		Hip Hop
Ⓜ	<a href="#">KASE</a>	100.7 FM	3.5 mi.	<a href="#">Austin, TX</a>		Country
Ⓜ	<a href="#">KROX</a>	101.5 FM	3.5 mi.	<a href="#">Buda, TX</a>		Alternative
Ⓜ	<a href="#">KPEZ</a>	102.3 FM	7.2 mi.	<a href="#">Austin, TX</a>		Classic Rock
Ⓜ	<a href="#">KEYI</a>	103.5 FM	19.4 mi.	<a href="#">San Marcos, TX</a>		Oldies
Ⓜ	<a href="#">KQBT</a>	104.3 FM	24.6 mi.	<a href="#">Taylor, TX</a>		Top-40
Ⓜ	<a href="#">KXXS</a>	104.9 FM	31.4 mi.	<a href="#">Marble Falls, TX</a>		Spanish
Ⓜ	<a href="#">KXXS (CP) Ⓜ</a>	104.9 FM	17.4 mi.	<a href="#">Dripping Springs, TX</a>		Spanish
Ⓜ	<a href="#">KEMK</a>	105.9 FM	3.5 mi.	<a href="#">Round Rock, TX</a>		Rhythmic Oldies

<input checked="" type="checkbox"/> <b>KGSR</b>	107.1 FM	15.9 mi.	<input checked="" type="checkbox"/> <b>Bestrop, TX</b>	Adult Album Alternative
<input checked="" type="checkbox"/> <b>KINV</b>	107.7 FM	23.2 mi.	<input checked="" type="checkbox"/> <b>Georgetown, TX</b>	Tejano
<input checked="" type="checkbox"/> <b>KTSA</b>	550 AM	68.6 mi.	<input checked="" type="checkbox"/> <b>San Antonio, TX</b>	News/Talk
<input checked="" type="checkbox"/> <b>KLBJ</b>	590 AM	8.3 mi.	<input checked="" type="checkbox"/> <b>Austin, TX</b>	News/Talk
<input checked="" type="checkbox"/> <b>KSLR</b>	630 AM	72.5 mi.	<input checked="" type="checkbox"/> <b>San Antonio, TX</b>	Religious
<input checked="" type="checkbox"/> <b>KKYX</b>	680 AM	85.4 mi.	<input checked="" type="checkbox"/> <b>San Antonio, TX</b>	Country
<input checked="" type="checkbox"/> <b>KSAH</b>	720 AM	59.2 mi.	<input checked="" type="checkbox"/> <b>Universal City, TX</b>	Spanish
<input checked="" type="checkbox"/> <b>KIXL</b>	970 AM	7.5 mi.	<input checked="" type="checkbox"/> <b>Del Valle, TX</b>	Religious
<input checked="" type="checkbox"/> <b>KBBW</b>	1010 AM	98.3 mi.	<input checked="" type="checkbox"/> <b>Waco-Martin, TX</b>	Religious
<input checked="" type="checkbox"/> <b>KFIT</b>	1060 AM	6.0 mi.	<input checked="" type="checkbox"/> <b>Lockhart, TX</b>	Gospel Music
<input checked="" type="checkbox"/> <b>WOAI</b>	1200 AM	59.8 mi.	<input checked="" type="checkbox"/> <b>San Antonio, TX</b>	News/Talk
<input checked="" type="checkbox"/> <b>KWNX</b>	1260 AM	29.0 mi.	<input checked="" type="checkbox"/> <b>Taylor, TX</b>	Sports
<input checked="" type="checkbox"/> <b>KVET</b>	1300 AM	5.5 mi.	<input checked="" type="checkbox"/> <b>Austin, TX</b>	Sports
<input checked="" type="checkbox"/> <b>KJCE</b>	1370 AM	5.9 mi.	<input checked="" type="checkbox"/> <b>Rollingwood, TX</b>	Talk
<input checked="" type="checkbox"/> <b>KELG</b>	1440 AM	12.3 mi.	<input checked="" type="checkbox"/> <b>Manor, TX</b>	Spanish
<input checked="" type="checkbox"/> <b>KFON</b>	1490 AM	4.0 mi.	<input checked="" type="checkbox"/> <b>Austin, TX</b>	Spanish
<input checked="" type="checkbox"/> <b>KZNX</b>	1530 AM	16.8 mi.	<input checked="" type="checkbox"/> <b>Creedmoor, TX</b>	Sports
<input checked="" type="checkbox"/> <b>KTXZ</b>	1580 AM	7.0 mi.	<input checked="" type="checkbox"/> <b>West Lake Hills, TX</b>	Spanish
<input checked="" type="checkbox"/> <b>KOKE</b>	1600 AM	12.4 mi.	<input checked="" type="checkbox"/> <b>Pflugerville, TX</b>	Spanish

☒ very weak signal   ☒ weak signal   ☒ moderate signal   ☒ strong signal   ☒ very strong signal

### Try another search:

- Click on the help icons for additional information about a search term.
- If you are having trouble locating stations, look [here](#) for tips.
- Look [here](#) to find stations by geographic coordinates.

#### 1. Enter your city or zipcode: (United States only)

City or Zipcode:      State (optional) :  
Austin                      TX

#### 2. Choose which types of radio stations to find:

☐ AM Only   ☐ FM Only   ☒ AM and FM

- ☒ Licensed Stations   ☒ Low Power FM Stations   
☒ Construction Permits   ☒ FM Translators   
☒ Unlicensed Stations   ☒ FM Booster Stations

Station Format: Any Format

#### 3. Choose a reception range:

☒ Local Stations Only

<http://www.radio-locator.com/cgi-bin/locate?select=city&city=Austin&state=TX&sid=&x=0&y=0>

7/6/200

EXHIBIT 3

Sovereignty Study of State Department  
1931-1932, pp. 145-146



"not within the lawful jurisdiction of any other government" shall be occupied by American citizens. The discoverer of guano was to make such assertion, under oath. This assertion was made as to the Swan Islands, and a certificate, based in part thereon, was issued. If the jurisdiction, or claim of jurisdiction, of another State had been advanced the certificate would have been refused. The Cayo Verde Case, cited above, is illustrative. The mere issuance of a certificate, based upon the represented state of facts, cannot modify or alter the true facts. It would seem to follow that the Swan Islands, dominion over which was in Honduras, were not of that class of islands contemplated in the Act.

The same section provides that islands so possessed may be considered at the discretion of the President "as appertaining to the United States". The use of the word "appertain" is deft, since it carries no exact meaning and lends itself readily to circumstance and the wishes of those using it. It has given rise to such words as "appurtenant" and "appurtenance". The common law denies that land can be appurtenant to land. In a strict sense an island cannot be appurtenant to other territorial possessions. If the word "appertain" and its variants cannot be given a strict meaning they lose what little value they have when relied upon for the creation or

assertion

assertion of legal rights. The meaning of the Act must be found outside the phrase quoted above.

Section 1418 authorizes the President "at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer..." If, upon occupation under the Guano Act, the islands were to become a part of the domain of the United States such authorization would be unnecessary. Further, the President probably would not have received discretionary power.

Section 1419 provides that nothing in the Act "shall be construed as obliging the United States to retain possession of the islands ...." after the removal of guano. If the word "possession" was used in a strict sense it follows that a mere temporary occupation, for a fixed purpose, was contemplated. Of course, possession could be retained. But it is doubtful if the Act contemplated such occupation as would give rise to the right of sovereignty.

Section 1412 stipulates that a discoverer shall show, inter alia, that "possession was taken in the name of the United States...". This condition was included in the Attorney General's opinion of June 2, 1857. As shown above, several certificates recited that occupation was taken in the name of the United States; the Swan Islands certificate did not. But it is my opinion that

CERTIFICATE OF SERVICE

I certify that on this 7th day of July, 2004, I have caused copies of the foregoing OPPOSITION OF CHARLES CRAWFORD TO APPLICATION FOR REVIEW to be placed in the United States mails, first class, postage prepaid, addressed to the following:

Mark N. Lipp, Esq.  
Vinson & Elkins  
1455 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
Counsel for Rawhide Radio, LLC

Gregory L. Masters, Esq.  
Wiley Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
Counsel for Capstar TX Limited Partnership  
and Clear Channel Broadcasting Licenses, Inc.

Daniel Alpert, Esq.  
2120 North 21st Road, Suite 400  
Arlington, Virginia 22201  
Counsel for M&M Broadcasters, Ltd.

Harry F. Cole, Esq.  
1300 North 17th Street, 11th Floor  
Arlington, Virginia 22209  
Counsel for Elgin FM Limited Partnership

Jeffrey D. Southmayd, Esq.  
1220 19th Street, N.W., Suite 400  
Washington, D.C. 20036  
Counsel for The Sister Sherry Lynn Foundation, Inc.

Arthur V. Belendiuk, Esq.  
5028 Wisconsin Ave., N.W., Suite 301  
Washington, D.C. 20016  
Counsel for Dilley Broadcasters

Maurice Salsa  
5615 Evergreen Valley Drive  
Kingwood, Texas 77345

BK Radio  
c/o Bryan King  
1809 Lightsey Road  
Austin, Texas 78704

Stargazer Broadcasting, Inc.  
c/o David P. Garland  
1110 Hackney  
Houston, Texas 77023

Katherine Pyeatt  
6655 Aintree Circle  
Dallas, Texas 75214

  
Gene A. Bechtel